

**2013 DRAFTING REQUEST****Bill**

Received: **9/10/2013** Received By: **chanaman**  
 Wanted: **As time permits** Same as LRB:  
 For: **John Nygren (608) 266-2343** By/Representing: **Jennifer Malcore**  
 May Contact: Drafter: **mgallagh**  
 Subject: **Criminal Law - drugs** Addl. Drafters: **mduchek**

Extra Copies:

Submit via email: **YES**  
 Requester's email: **Rep.Nygren@legis.wisconsin.gov**  
 Carbon copy (CC) to: **michael.gallagher@legis.wisconsin.gov**  
**michael.duchek@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Identification necessary to pick up certain prescriptions

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**Instructions:**

See attached

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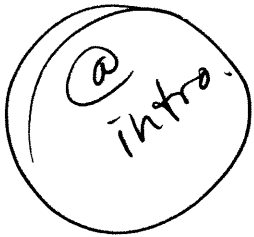
**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 9/11/2013	evinz 9/23/2013	jmurphy 9/23/2013	_____			
/P1	chanaman 9/24/2013	evinz 9/24/2013	rschluet 9/24/2013	_____	mbarman 9/23/2013		State Crime
/P2	chanaman	evinz	jmurphy	_____	srose		State

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	10/2/2013	10/3/2013	10/3/2013	_____	9/24/2013		Crime
/P3	mgallagh 10/4/2013	wjackson 10/4/2013		_____	sbasford 10/3/2013		State Crime
/1	mgallagh 10/4/2013	wjackson 10/4/2013	jfrantze 10/4/2013	_____	srose 10/4/2013		State
/2				_____	lparisi 10/4/2013	srose 10/4/2013	State

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<END>



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/P3 mgallagh

1 wj 10/4

*[Handwritten signature]*

*[Handwritten signature]*  
10/4

sbasford  
10/3/2013

State  
Crime

FE Sent For:

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Identification necessary to pick up certain prescriptions

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Vers. Drafted

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10/3/2013

Crime

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### Topic:

Identification necessary to pick up certain prescriptions ✓

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See attached

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Identification necessary to pick up certain prescriptions ✓

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FE Sent For:

p2 evv  
9/24/13  
END>

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 May Contact: Drafter: chanaman  
 Subject: Criminal Law - drugs Addl. Drafters:  
 Extra Copies:

Submit via email: YES  
 Requester's email: Rep.Nygren@legis.wisconsin.gov  
 Carbon copy (CC) to:

## Pre Topic:

No specific pre topic given

## Topic:

Identification necessary to pick up certain prescriptions *ref*

## Instructions:

See attached

## Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	chanaman 9/11/2013	<i>1pl eev</i> <i>9/23/13</i>	<i>M</i> <i>9/23</i>	<i>mtj</i> <i>9/23</i>			State Crime

FE Sent For:

<END>

## Hanaman, Cathlene

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**From:** Dodge, Tamara  
**Sent:** Tuesday, September 10, 2013 7:38 AM  
**To:** Hurley, Peggy; Hanaman, Cathlene  
**Subject:** FW: ID when picking up prescription narcotics

Ladies,

I'm thinking this is a controlled substances draft but I could be wrong. It would require an ID to pick up a prescription narcotic. Let me know if it's mine or let Jennifer know it is yours.

### Tamara J. Dodge

Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
(608) 267 - 7380  
[tamara.dodge@legis.wisconsin.gov](mailto:tamara.dodge@legis.wisconsin.gov)

**From:** Malcore, Jennifer  
**Sent:** Friday, September 06, 2013 9:34 AM  
**To:** Dodge, Tamara  
**Subject:** ID when picking up prescription narcotics

Tamara,

Below is what we would like drafted and after that is just some information that I found. Please let me know if you have any questions or if you need more information.

1. Having to provide an ID to a pharmacist to pick up prescription narcotics. One of the recommendations from DHS was to establish pharmacy guidelines or legislation regarding the release of prescription narcotics from pharmacies to anyone other than who the prescription is intended. We would like to draft legislation that would require whoever is picking up the prescription narcotic, must show an ID, the pharmacist will take down the name and provide it to the Prescription Drug Monitoring Program.

States that have passed a similar law...

North Carolina ~ passed a law to have a photo ID to pick up prescription medication, someone else can pick it up, they just need an ID.

<http://www.wect.com/story/17059115/photo-id-needed-to-pick-up-prescriptions>

Massachusetts ~People picking up certain prescriptions at the pharmacy will have to show a photo identification starting today, as new state health regulations intended to prevent prescription drug abuse and overdose deaths take effect.

Patients filling prescriptions for a category of drugs that includes OxyContin and other powerful painkillers have long had to show photo ID. But beginning today, the ID requirement is expanded

to several new categories of drugs, including certain types of pain medications, sedatives, and antianxiety drugs such as Ativan and Valium.

<http://www.mass.gov/eohhs/docs/dph/quality/drugcontrol/customer-id-requirement.pdf>

Articles regarding ID for prescription

<http://www.tampabay.com/news/health/law-doesnt-require-id-to-pick-up-prescription-drugs/1215058>

Thank you,

**Jennifer Malcore**

Office of State Representative John Nygren

Co-Chair , Joint Committee on Finance

89<sup>th</sup> Assembly District

309 East, State Capitol

608.266.2344



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-31127 P1  
CMH&MED:.....

eev

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

today  
please  
per requester

- 1 AN ACT ...; relating to: identification presentation and monitoring for  
2 prescription narcotics and providing a penalty.

*Analysis by the Legislative Reference Bureau*

Under current law, a drug, or controlled substance, is classified in one of five separate schedules. The classification is based on: 1) whether there is a currently accepted medical use for the drug; 2) the drug's potential for abuse; and 3) the nature of the dependence that use of the drug may produce. Controlled substances that have a high potential for abuse and no currently accepted medical use are included in schedule I. Controlled substances that have an accepted medical use and that have the lowest potential for abuse and produce the least dependence when compared with other controlled substances are included in schedule V. In general, a schedule I controlled substance may not be dispensed, even with a prescription. A schedule II, III, or IV controlled substance may be dispensed, but only with a prescription. Any person who dispenses a schedule II, III, or IV controlled substance without a prescription is guilty of a felony, the level of which depends on the classification of the controlled substance. Under this bill, a schedule II, III, or IV controlled substance that is also a narcotic or opiate may not be dispensed without an identification card that belongs to the person to whom the drug is prescribed. Acceptable forms of identification are a driver's license, a state identification, a U.S. uniformed service card, or a U.S. passport. Under the bill, any person who, without seeing an identification card, dispenses a schedule II, III, or IV controlled substance that is also a narcotic or opiate is guilty of a felony, the level of which depends on the classification of the controlled substance.



Current law requires the Pharmacy Examining Board (PEB) to establish a program to monitor the dispensing of certain prescription drugs, including schedule II and schedule III controlled substances and other drugs identified by the PEB as having a high potential for abuse. The program requires pharmacists or persons who prescribe prescription drugs to generate records documenting the dispensing of prescription drugs. The bill requires the PEB to likewise monitor and document the dispensing of schedule IV controlled substances that, under this bill, require the presentation of an identification because they are narcotics or opiates.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 450.19 (1) (b) of the statutes is amended to read:

450.19 (1) (b) "Prescription drug" means a substance identified in s. 961.16 or

961.18 or, a substance identified in s. 961.20 that, under s. 961.28 (3) (a) 2., may not

be dispensed without an identification card, or a drug identified by the board by rule

as having a substantial potential for abuse.

**History:** 2009 a. 362; 2011 a. 260 s. 81; 2013 a. 3, 20.

**History:** C 280g-3 and under the Harold Rogge Prescription Drug Monitoring Program to fund the establishment and operation of the program under this section. If the department fails to obtain federal funding before January 1, 2015, this section is void.

SECTION 2. 961.38 (1g) of the statutes is renumbered 961.38 (1g) (intro.) and

amended to read:

961.38 (1g) (intro.) In this section, "medical;

(b) "Medical treatment" includes dispensing or administering a narcotic drug

for pain, including intractable pain.

SECTION 3. 961.38 (1g) (a) of the statutes is created to read:

961.38 (1g) (a) "Identification card" means any of the following:

1. An operator's license issued under ch. 343.

2. An identification card issued under s. 343.50.

1           3. An identification card issued by a U.S. uniformed service.

2           4. A U.S. passport.

3           History: 1971 c. 219; 1975 c. 190, 421; 1977 c. 203; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27; 2011 a. 159.

4           **SECTION 4.** 961.38 (1r) of the statutes is renumbered 961.38 (2) (a).

5           History: 1971 c. 219; 1975 c. 190, 421; 1977 c. 203; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27; 2011 a. 159.

6           **SECTION 5.** 961.38 (2) of the statutes is renumbered 961.38 (2) (b) and amended

7           to read:

8           961.38 (2) (b) ~~In Notwithstanding par. (a),~~ in emergency situations, as defined  
9           by rule of the pharmacy examining board, schedule II drugs may be dispensed upon  
10          an oral prescription of a practitioner, reduced promptly to a written hard copy or  
11          electronic record and filed by the pharmacy.

12          (d) Prescriptions under par. (a) or (b) shall be retained in conformity with rules  
13          of the pharmacy examining board promulgated under s. 961.31. No prescription for  
14          a schedule II substance may be refilled.

15          History: 1971 c. 219; 1975 c. 190, 421; 1977 c. 203; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27; 2011 a. 159.

16          **SECTION 6.** 961.38 (2) (c) of the statutes is created to read:

17          961.38 (2) (c) A controlled substance included in schedule II that is a narcotic  
18          drug may not be dispensed under par. (a) or (b) without an identification card  
19          belonging to the person for whom the drug is prescribed.

20          **SECTION 7.** 961.38 (3) of the statutes is renumbered 961.38 (3) (a) (intro.) and  
21          amended to read:

22          961.38 (3) (a) (intro.) Except when dispensed directly by a practitioner, other  
23          than a pharmacy, to an ultimate user, a controlled substance included in schedule III  
24          or IV, which is a prescription drug, shall not be dispensed without ~~a~~ all of the  
25          following:

26          1. A written, oral, or electronic prescription of a practitioner. The

1 (b) A prescription under par. (a) 1. shall not be filled or refilled except as  
2 designated on the prescription and in any case not more than 6 months after the date  
3 thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

History: 1971 c. 219; 1975 c. 190, 421; 1977 ~~c. 203~~; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27; 2011 a. 159.

4 **SECTION 8.** 961.38 (3) (a) 2. of the statutes is created to read:

5 961.38 (3) (a) 2. If the controlled substance is a narcotic drug, an identification  
6 card belonging to the person for whom the drug is prescribed.

7 **SECTION 9.** 961.38 (4r) of the statutes is ~~renumbered~~ <sup>renumbered</sup> 961.38 (4r) (intro.) and  
8 amended to read:

9 961.38 (4r) (intro.) A pharmacist is immune from any civil or criminal liability  
10 and from discipline under s. 450.10 for any act taken by the pharmacist in reliance

11 ~~on any of the following:~~

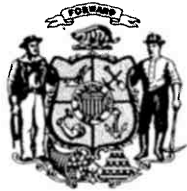
12 (a) A reasonable belief that an order purporting to be a prescription was issued  
13 by a practitioner in the usual course of professional treatment or in authorized  
14 research.

History: 1971 c. 219; 1975 c. 190, 421; 1977 ~~c. 203~~; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27; 2011 a. 159.

15 **SECTION 10.** 961.38 (4r) (b) of the statutes is created to read:

16 961.38 (4r) (b) An identification card that the pharmacist reasonably believed  
17 was authentic and displayed the name of the person for whom the drug was  
18 prescribed if the sale was made in good faith.

19 (END)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3112/PX  
CMH&MED:eev:jm

P2

today  
if possible  
wed a.m.

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

reyn cat

1 **AN ACT** *to renumber* 961.38 (1r); *to renumber and amend* 961.38 (1g), 961.38  
2 (2), 961.38 (3) and 961.38 (4r); *to amend* 450.19 (1) (b); and *to create* 961.38  
3 (1g) (a), 961.38 (2) (c), 961.38 (3) (a) 2. and 961.38 (4r) (b) of the statutes;  
4 **relating to:** identification presentation and monitoring for prescription  
5 narcotics and providing a penalty.

***Analysis by the Legislative Reference Bureau***

Under current law, a drug, or controlled substance, is classified in one of five separate schedules. The classification is based on: 1) whether there is a currently accepted medical use for the drug; 2) the drug's potential for abuse; and 3) the nature of the dependence that use of the drug may produce. Controlled substances that have a high potential for abuse and no currently accepted medical use are included in Schedule I. Controlled substances that have an accepted medical use and that have the lowest potential for abuse and produce the least dependence when compared with other controlled substances are included in Schedule V. In general, a Schedule I controlled substance may not be dispensed, even with a prescription. A Schedule II, III, or IV controlled substance may be dispensed, but only with a prescription. Any person who dispenses a Schedule II, III, or IV controlled substance without a prescription is guilty of a felony, the level of which depends on the classification of the controlled substance. Under this bill, a Schedule II, III, or IV controlled substance that is also a narcotic or opiate may not be dispensed without an identification card that belongs to the person to whom the drug is prescribed.

unless  
unless

who is picking up the drug  
shows ~~an~~ his or her  
identification card

Acceptable forms of identification are a driver's license, a state identification card, a U.S. uniformed service card, or a U.S. passport. Under the bill, any person who, without seeing an identification card, dispenses a Schedule II, III, or IV controlled substance that is also a narcotic or opiate is guilty of a felony, the level of which depends on the classification of the controlled substance.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 450.19 (1) (b) of the statutes is amended to read:

2           450.19 (1) (b) "Prescription drug" means a substance identified in s. 961.16 or  
3           961.18 or, a substance identified in s. 961.20 that, under s. 961.38 (3) (a) 2., may not  
4           be dispensed without an identification card, or a drug identified by the board by rule  
5           as having a substantial potential for abuse.

6           **SECTION 2.** 961.38 (1g) of the statutes is renumbered 961.38 (1g) (intro.) and  
7           amended to read:

8           961.38 (1g) (intro.) In this section, ~~"medical:~~

9           (b) "Medical treatment" includes dispensing or administering a narcotic drug  
10          for pain, including intractable pain.

11          **SECTION 3.** 961.38 (1g) (a) of the statutes is created to read:

12          961.38 (1g) (a) "Identification card" means any of the following:

1. An operator's license issued under ch. 343.

2. An identification card issued under s. 343.50.

3. An identification card issued by a U.S. uniformed service.

4. A U.S. passport.

**SECTION 4.** 961.38 (1r) of the statutes is renumbered 961.38 (2) (a).

**SECTION 5.** 961.38 (2) of the statutes is renumbered 961.38 (2) (b) and amended to read:

961.38 (2) (b) ~~In~~ Notwithstanding par. (a), in emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon an oral prescription of a practitioner, reduced promptly to a written hard copy or electronic record and filed by the pharmacy.

(d) Prescriptions under par. (a) or (b) shall be retained in conformity with rules of the pharmacy examining board promulgated under s. 961.31. No prescription for a schedule II substance may be refilled.

**SECTION 6.** 961.38 (2) (c) of the statutes is created to read:

961.38 (2) (c) A controlled substance included in schedule II that is a narcotic drug may not be dispensed under par. (a) or (b) without an identification card belonging to the person for whom the drug is prescribed. *to whom the drug is being dispensed*

**SECTION 7.** 961.38 (3) of the statutes is renumbered 961.38 (3) (a) (intro.) and amended to read:

961.38 (3) (a) (intro.) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug, shall not be dispensed without ~~a~~ all of the following:

1. A written, oral, or electronic prescription of a practitioner. The

(b) A prescription under par. (a) 1. shall not be filled or refilled except as designated on the prescription and in any case not more than 6 months after the date thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

SECTION 8. 961.38 (3) (a) 2. of the statutes is created to read:

961.38 (3) (a) 2. If the controlled substance is a narcotic drug, an identification card belonging to the person for whom the drug is prescribed, to whom the drug is being dispensed

SECTION 9. 961.38 (4r) of the statutes is renumbered 961.38 (4r) (intro.) and amended to read:

961.38 (4r) (intro.) A pharmacist is immune from any civil or criminal liability and from discipline under s. 450.10 for any act taken by the pharmacist in reliance on ~~a~~ any of the following:

(a) A reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

SECTION 10. 961.38 (4r) (b) of the statutes is created to read:

961.38 (4r) (b) An identification card that the pharmacist reasonably believed was authentic and displayed the name of the person for whom the drug was prescribed, if the sale was made in good faith. to

(END)

being dispensed

INS

4-19

SAJ  
xref ✓

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3112/p2ins  
CMH:.....

Ins 4-19

1

x

2

SECTION 1. 961.435 (title) of the statutes is amended to read:

3

**961.435 (title) Specific ~~penalty~~ penalties.**

4

History: 1975 c. 190; 1995 a. 448 s. 269; Stats. 1995 s. 961.435.

x

✓

SECTION 2. 961.435 of the statutes is renumbered 961.435 (1).

5

✓

SECTION 3. 961.435 (2) of the statutes is created to read:

6

961.435 (2) A person who violates s. 961.38 (2) (c) or (3) (a) 2. may be fined not

7

more than \$500 for ~~that~~ violation and is not subject to a penalty under s. 961.41 for

8

that violation.

each



**FREQUENTLY ASKED QUESTIONS ABOUT S.L. 2011-349,  
AN ACT TO DIRECT PHARMACIES TO REQUIRE PHOTO IDENTIFICATION  
PRIOR TO DISPENSING CERTAIN CONTROLLED SUBSTANCES**

***ISSUED: NOVEMBER 29, 2011***

***UPDATE: JANUARY 5, 2012 (Questions 3 and 11)***

***UPDATE: FEBRUARY 20, 2012 (Question 3)***

***UPDATE: MARCH 6, 2012 (Questions 3, 5 and 12)***

***UPDATE: MARCH 7, 2012 (Question 12)***

***UPDATE: MARCH 13, 2012 (New Question 20)***

1. **Why did the Board pass this law?** The Board did not pass this law. It is a statute passed by the North Carolina General Assembly during the 2011 Session.
  
2. **For which controlled substances is photo identification required prior to dispensing?** NCGS § 90-106.1 imposes an identification prior to dispensing all Schedule II controlled substances and "Schedule III controlled substances listed in subdivisions 1 through 8 of G.S. 90-91(d)." Those subdivisions list the "combination" Schedule III controlled substances – i.e., Vicodin and the like.
  
3. **What is an acceptable form of identification?** The statute states that only four types of identification are acceptable: a driver's license, a special identification card issued by the North Carolina Department of Motor Vehicles, a military identification, and a passport. This requirement is likely to pose access problems for a number of patient populations.

**January 5, 2012 Update**

- A number of pharmacists have inquired whether employee identification badges meet this requirement. No. As noted, the statute recognizes four, and only four, government-issued identification documents.
  
- Several pharmacists have asked whether the pharmacist must personally review the identification. No. The statute places responsibility for reviewing and documenting proper identification on "the pharmacy." Accordingly, other pharmacy staff (e.g., technicians or cashiers) may review and document the identification. Both the pharmacy permit and pharmacist manager are, of course, responsible for ensuring that the statute's requirements are being met.


**February 20, 2012 Update**

- Pharmacists have inquired whether a foreign national's identification is acceptable. With respect to a passport, yes. The statute specifies that a "government-issued" passport is an acceptable identification, and the statute does not state that the passport must be "U.S.-government issued." Similarly, the statutory language does not appear to exclude a foreign-government issued driver's license or military identification from eligibility, so long as it is current, has a photograph of the holder, and has an identifying number. The "special identification card" option, however, is limited to a "special identification card" issued by the North Carolina Department of Motor Vehicles.

#### March 6, 2012 Update

- Board staff has received more questions about identification from foreign nationals. The February 20 update above discussed that issue. Some pharmacists have asked about identifications issued by the Mexican Consulate. Such identifications are not a "driver's license," "passport," or "military identification" and thus do not satisfy the statutory requirement. Other pharmacists have asked about "green cards" issued by the U.S. government. Such identifications are, of course, "government issued" and they include a photograph and an identification number. Nonetheless, "green cards" are not a "driver's license," "passport," or "military identification." Board staff is acutely aware of the access problem this limitation creates for certain patient populations.
4. **May a pharmacist accept an expired identification?** No. The statute specifies that the identification be "unexpired." This requirement is likely to pose particular access problems for elderly patients.
5. **If a patient lacks an unexpired identification that meets the statutory requirement, may someone else obtain the prescription?** Yes. The statute specifies that "[n]othing . . . shall be deemed to require that the person seeking the dispensation and the person to whom the prescription is issued be the same person." If a patient lacking the requisite identification is able to convince a friend or family member to present their identification, that person may receive the prescription on behalf of the patient. The identification of the person receiving the prescription must be documented.

#### March 6, 2012 Update

- 
- Pharmacists have asked whether the statute allows a pharmacist, technician, or other pharmacy employee (such as a delivery person) to provide an identification and facilitate delivery of a covered prescription drug to a patient who lacks the requisite

identification. Nothing in the statute prohibits this practice. Board staff recommends, as noted in Question 6 below, that pharmacies document the patient's designation of the pharmacist, technician or other pharmacy employee as an authorized "pick up person." Board staff notes further that a pharmacist, technician, or other pharmacy employee providing identification in this way be fully aware that his/her identification is being recorded for multiple controlled substance prescriptions.

6. **Does the "other person picking up the prescription" provision raise patient privacy issues?** Potentially. If the patient for whom the prescription was issued is not present at pick-up, questions could arise as to whether person picking up is authorized by the patient to do so. Board staff recommends that pharmacists ask patients to designate authorized "pick up persons" and document that authorization in the patient profile or other appropriate record.

7. **When a patient who presented identification for initial dispensing returns for a refill, and the pharmacist knows it is the same person seeking the refill, does the pharmacist have to again obtain and record the identification?** Board staff believes the answer to this question is "no." There is no apparent purpose served by requiring a second presentation and recording of an identification in this circumstance. Nor does repeat identification check in this circumstance appear to be compelled by the North Carolina Controlled Substance Act's definition of "dispense."

8. **What if one person drops off a prescription for filling and another arrives to pick up the prescription? From whom must the pharmacist obtain the requisite identification?** Board staff interprets the "person seeking dispensation" under the statute to be the person who arrives to pick up the prescription or to whom the prescription is delivered (see question #9 below).

9. **If a pharmacy provides delivery service, must delivery personnel obtain and record the identification information at the time of delivery?** Yes.

10. **How can an out-of-state pharmacy that provides mail-service-only prescription services to North Carolina patients comply with this identification requirement?** The statute, on its face, does not apply to out-of-state pharmacies. It applies strictly and exclusively to "each pharmacy holding a valid permit pursuant to G.S. 90-85.21." G.S. 90-85.21 sets forth the permit requirements for "each pharmacy in North Carolina." G.S. 90-85.21A, a separate statutory section and not a subsection of 90-85.21, sets forth the permit requirement for "any pharmacy operating outside the State."

11. **ADDED JANUARY 5, 2012. Must an in-state pharmacy that provides mail-service prescriptions to North Carolina patients or out-of-state patients comply with this**

**identification requirement?** As noted above, the controlled substance ID check does not, on its face, apply to out-of-state pharmacies that ship covered controlled substances to patients in North Carolina.

The statute does not explicitly exempt in-state pharmacies that provide mail delivery of covered controlled substances from the ID check. Plainly, however, in-state pharmacies shipping covered controlled substances by mail could not comply with the ID check requirement. Board staff does not believe that the General Assembly intended to prohibit in-state pharmacies from engaging in the same mail-delivery services that out-of-state pharmacies may engage in.

Accordingly, Board staff will not pursue disciplinary action against a North Carolina pharmacy that provides mail-order delivery of Schedule II or covered Schedule III medications to patients. When asked to interpret a statute, a court will avoid creating an absurd result. Board staff believes that interpreting this statute to create a requirement for in-state pharmacies (but not out-of-state pharmacies) that would be impossible to satisfy is an absurd result. Staff at the Drug Control Unit agrees with Board staff's view on this matter.

**12. Does this statute apply when dispensing to patients in hospitals or other health care facilities?** No. The statute excludes dispensing in "health care facilities, as that term is defined in G.S. 131E-256(b), when the controlled substances are delivered to the health care facilities for the benefit of residents or patients of such health care facilities." G.S. 131E-256(b) includes adult care homes, hospitals, home care agencies, hospices, nursing facilities, and "community-based providers of services for the mentally ill, the developmentally disabled, and substance abusers that are not required to be licensed under Article 2 of Chapter 122C of the General Statutes."

#### **March 6, 2012 Update**

- Several pharmacists have asked whether an identification check is required prior to dispensing a Schedule II or covered Schedule III controlled substance to a hospice patient receiving hospice care at his/her home. The statute states that delivery of such prescription drugs to "employees" of a "health care facility" for "the benefit of residents or patients or such health care facilities" does not trigger the identification check requirement. The relevant statute defines "hospice" as "any coordinated program of home care with provision for inpatient care for terminally ill patients and their families. . . ." Accordingly, Board staff concludes that the identification check requirement does not apply to home-based hospice patients when delivery of the covered medication is made to an "employee" of the hospice care provider.

- Relatedly, some pharmacists have inquired whether the identification check is required when a non-employee caretaker of a home hospice patient (such as a family member) picks up a prescription for a covered drug. In this case, the statute does require checking the identification of the person picking up the prescription. The “health care facility” exception (which, as noted, includes hospice) is limited to delivery to “employees” of the health care facility.

### **March 7, 2012 Update**

- Pharmacists have inquired whether the dispensing of a small “starter” supply of a Schedule II or covered Schedule III drug in an emergency room triggers the identification requirement. Board staff interprets the statute as not requiring identification check and recording in this instance. As noted directly above, delivery of such prescription drugs to “employees” of a “health care facility” for “the benefit of residents or patients or such health care facilities” does not trigger the identification check-and-record requirements. Emergency room patients are “patients” of a “health care facility,” and provision of covered drugs to these patients occurs by “employees” of the hospital in the emergency department.

13. **Does the identification check and record requirement apply to outpatient and/or employee pharmacy services at hospitals?** Yes. When a hospital (or other “health care facility”) pharmacy provides controlled substances to employees who will then going to administer those substances to inpatients, the identification requirement does not apply (see question #12 above). But if a hospital operates an outpatient pharmacy, dispensing is not being provided from that facility to “residents or patients,” and the identification check and record provision applies.

14. **What does the statute require the pharmacy to record?** The pharmacy must “document the name of the person seeking the dispensation, the type of photographic identification presented by the person seeking the dispensation, and the photographic identification number.”

15. **Must the pharmacy scan or otherwise image the identification?** No.

16. **Does the statute specify a particular format for the documentation?** No.

17. **Where and how long do I have to retain the documentation?** The documentation must be retained “on the premises or at a central location apart from the premises as part of its business records for a period of three years following the dispensation.”

**18. Can't I just send the identification documentation information with my North Carolina Controlled Substance Reporting System updates?** The statute contemplates transmittal of information through the CSRS as a means of maintaining documentation. The software currently used by the North Carolina CSRS is not, however, capable of receiving this information. Bill Bronson, head of the Drug Control Unit, reports his anticipation that the CSRS software will be upgraded to receive this information within the next 12 months. The Board will announce any upgrade information upon receiving it.

**19. Who can access the identification information from my prescription files?** The statute limits access to those persons authorized to receive information from the Controlled Substance Reporting System:

- (1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients.
- (2) An individual who requests the individual's own controlled substances reporting system information.
- (3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication and who are engaged in a bona fide specific investigation related to enforcement of laws governing licit drugs. The SBI shall notify the Office of the Attorney General of North Carolina of each request for inspection of records maintained by the Department.
- (4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.
- (5) To a court pursuant to a lawful court order in a criminal action.
- (6) The Division of Medical Assistance for purposes of administering the State Medical Assistance Plan.
- (7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.

(8) Any county medical examiner appointed by the Chief Medical Examiner pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose of investigating the death of an individual.

G.S. 90-113.74(c)

Note: Neither local law enforcement nor sheriff's departments have an independent authority to access the Controlled Substance Reporting System, and thus have no independent authority to access documented identification information under this statute.

20. **I am a dispensing physician/physician assistant/nurse practitioner. Must I comply with identification check requirements?** For physician assistants and nurse practitioners, the answer is clearly yes. Under North Carolina law, a physician assistant or nurse practitioner "must . . . dispense[] from a place holding a current pharmacy permit from the Board as required by G.S. 90-85.21" 21 NCAC 46.1703(d). The controlled substance identification statute imposes its requirements on "each pharmacy holding a valid permit pursuant to G.S. 90-85.21." Accordingly, a dispensing physician assistant or nurse practitioner must comply with the identification requirements.

For dispensing physician, while the issue is somewhat clouded, the answer also appears to be yes. As noted, the identification requirement attaches to "each pharmacy holding a valid permit pursuant to G.S. 90-85.21." Dispensing physicians are not "pharmacies," but are required to hold a valid permit from the Board of Pharmacy pursuant to G.S. 90-85.21(b). Moreover, G.S. 90-85.21(b) requires all physician dispensing to "comply in all respects with the relevant laws and regulations that apply to pharmacists governing the distribution of drugs, including packaging, labeling, and record keeping." The controlled substance identification is a law that "govern[s] the distribution of drugs," specifically recordkeeping.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3112/P2  
CMH&MED:eev:rs

P3

Thurs  
please

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

refer to

1 **AN ACT** *to renumber* 961.38 (1r) and 961.435; *to renumber and amend* 961.38  
2 (1g), 961.38 (2), 961.38 (3) and 961.38 (4r); *to amend* 450.19 (1) (b) and 961.435  
3 (title); and *to create* 961.38 (1g) (a), 961.38 (2) (c), 961.38 (3) (a) 2., 961.38 (4r)  
4 (b) and 961.435 (2) of the statutes; **relating to:** identification presentation and  
5 monitoring for prescription narcotics and providing a penalty.

---

***Analysis by the Legislative Reference Bureau***

Under current law, a drug, or controlled substance, is classified in one of five separate schedules. The classification is based on: 1) whether there is a currently accepted medical use for the drug; 2) the drug's potential for abuse; and 3) the nature of the dependence that use of the drug may produce. Controlled substances that have a high potential for abuse and no currently accepted medical use are included in Schedule I. Controlled substances that have an accepted medical use and that have the lowest potential for abuse and produce the least dependence when compared with other controlled substances are included in Schedule V. In general, a Schedule I controlled substance may not be dispensed, even with a prescription. A Schedule II, III, or IV controlled substance may be dispensed, but only with a prescription. Any person who dispenses a Schedule II, III, or IV controlled substance without a prescription is guilty of a felony, the level of which depends on the classification of the controlled substance. Under this bill, a Schedule II, III, or IV controlled substance that is also a narcotic or opiate may not be dispensed unless the person who is picking up the drug shows his or her identification card. Acceptable forms of



identification are a driver's license, a state identification card, a U.S. uniformed service card, or a U.S. passport. Under the bill, any person who, without seeing an identification card, dispenses a Schedule II, III, or IV controlled substance that is also a narcotic or opiate is subject to a fine of up to \$500.

Current law requires the Pharmacy Examining Board (PEB) to establish a program to monitor the dispensing of certain prescription drugs, including Schedule II and Schedule III controlled substances and other drugs identified by the PEB as having a high potential for abuse. The program requires pharmacists or persons who prescribe prescription drugs to generate records documenting the dispensing of prescription drugs. The bill requires the PEB to likewise monitor and document the dispensing of Schedule IV controlled substances that, under this bill, require the presentation of an identification because they are narcotics or opiates.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 450.19 (1) (b) of the statutes is amended to read:

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3           961.18 or, a substance identified in s. 961.20 that, under s. 961.38 (3) (a) 2., may not  
4           be dispensed without an identification card, or a drug identified by the board by rule  
5           as having a substantial potential for abuse.

6           **SECTION 2.** 961.38 (1g) of the statutes is renumbered 961.38 (1g) (intro.) and  
7           amended to read:

8           961.38 (1g) (intro.) In this section, ~~"medical;~~

9           (b) "Medical treatment" includes dispensing or administering a narcotic drug  
10          for pain, including intractable pain.

11          **SECTION 3.** 961.38 (1g) (a) of the statutes is created to read:

12          961.38 (1g) (a) "Identification card" means any of the following:

- 1           1. An operator's license issued under ch. 343.
- 2           2. An identification card issued under s. 343.50.
- 3           3. An identification card issued by a U.S. uniformed service.
- 4           4. A U.S. passport.

5           **SECTION 4.** 961.38 (1r) of the statutes is renumbered 961.38 (2) (a).

6           **SECTION 5.** 961.38 (2) of the statutes is renumbered 961.38 (2) (b) and amended  
7 to read:

8           961.38 (2) (b) In Notwithstanding par. (a), in emergency situations, as defined  
9 by rule of the pharmacy examining board, schedule II drugs may be dispensed upon  
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11 electronic record and filed by the pharmacy.

12           (d) Prescriptions under par. (a) or (b) shall be retained in conformity with rules  
13 of the pharmacy examining board promulgated under s. 961.31. No prescription for  
14 a schedule II substance may be refilled.

15           **SECTION 6.** 961.38 (2) (c) of the statutes is created to read:

16           961.38 (2) (c) *Except when dispensed directly by a practitioner,*  
~~A~~ controlled substance included in schedule II that is a narcotic  
17 drug may not be dispensed under par. (a) or (b) without an identification card  
18 belonging to the person to whom the drug is being dispensed.

19           **SECTION 7.** 961.38 (3) of the statutes is renumbered 961.38 (3) (a) (intro.) and  
20 amended to read:

21           961.38 (3) (a) (intro.) Except when dispensed directly by a practitioner, other  
22 than a pharmacy, to an ultimate user, a controlled substance included in schedule III  
23 or IV, which is a prescription drug, shall not be dispensed without ~~a~~ all of the  
24 following:

25           1. A written, oral, or electronic prescription of a practitioner. The

**SECTION 7**

1        (b) A prescription under par. (a) 1. shall not be filled or refilled except as  
2        designated on the prescription and in any case not more than 6 months after the date  
3        thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

4        **SECTION 8.** 961.38 (3) (a) 2. of the statutes is created to read:

5        961.38 (3) (a) 2. If the controlled substance is a narcotic drug, an identification  
6        card belonging to the person to whom the drug is being dispensed.

7        **SECTION 9.** 961.38 (4r) of the statutes is renumbered 961.38 (4r) (intro.) and  
8        amended to read:

9        961.38 (4r) (intro.) A pharmacist is immune from any civil or criminal liability  
10       and from discipline under s. 450.10 for any act taken by the pharmacist in reliance  
11       on ~~a~~ any of the following:

12       (a) A reasonable belief that an order purporting to be a prescription was issued  
13       by a practitioner in the usual course of professional treatment or in authorized  
14       research.

15       **SECTION 10.** 961.38 (4r) (b) of the statutes is created to read:

16       961.38 (4r) (b) An identification card that the pharmacist reasonably believed  
17       was authentic and displayed the name of the person to whom the drug was being  
18       dispensed if the sale was made in good faith.

19       **SECTION 11.** 961.435 (title) of the statutes is amended to read:

20       **961.435 (title) Specific penalty penalties.**

21       **SECTION 12.** 961.435 of the statutes is renumbered 961.435 (1).

22       **SECTION 13.** 961.435 (2) of the statutes is created to read:

1WS  
4-7

1            961.435 (2) A person who violates s. 961.38 (2) (c) or (3) (a) 2. may be fined not  
2            more than \$500 for each violation and is not subject to a penalty under s. 961.41 for  
3            that violation.

4 (END)

**2013-2014 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3112/p3ins  
CMH:.....

INS 2-6 ✓

**SECTION 1.** 450.19 (2) (b) of the statutes is amended to read:

450.19 (2) (b) Identify specific data elements, including, if applicable, the name  
on the identification <sup>card</sup> presented under s. 961.38 (2) (c) or (3) (a) 2. by the person to  
whom the prescription drug is dispensed, to be contained in a record documenting  
the dispensing of a prescription drug. In identifying specific data elements, the board  
shall consider data elements identified by similar programs in other states and shall  
ensure, to the extent possible, that records generated by the program are easily  
shared with other states.

**History:** 2009 a. 362; 2011 a. 260 s. 81; 2013 a. 3, 20.

Insert 4-7

**SECTION 2.** 961.38 (3g) of the statutes is <sup>✓</sup>created to read:

961.38 (3g) If sub. (2) (c) or (3) (a) 2. <sup>✓</sup>requires the presentation of an  
identification <sup>card</sup> before a drug may be dispensed and the person to whom the drug is  
being dispensed is not the user of the drug, the person dispensing the drug may ask  
the user of the drug to designate a person as a person who is authorized to pick up  
the drug and may inform the person to whom the drug is being dispensed that his  
or her identification is being recorded under s. 450.19 <sup>✓</sup>

## Gallagher, Michael

---

**From:** Hanaman, Cathlene  
**Sent:** Thursday, October 03, 2013 4:17 PM  
**To:** Gallagher, Michael; Duchek, Michael  
**Subject:** -3112-- I'm out

They want -3112 to be entirely under ch. 450 (so I am out as it's no longer in ch. 961 at all).

They want the person picking up ANY sched II or sched III prescription to show an id (their own, regardless of the ultimate user of the drug)—not just narcotics like in the current version. If doctor directly administering the drug, no id is necessary. Get rid of any narcotics in sched IV currently in draft—also use terms of ch. 450 versus “dispensing” which is a holdover term from ch. 961.

They want the name on the id to be recorded under s. 450.19.

Make sure anyone can pick up drug and allow pharmacists to inform person picking up drug about the name recording.

And they want it by 10 tomorrow morning.

- penalty? See 450.11(9)
- ~~limited liability?~~
- ~~dispensed or delivered?~~



10/4 Today by 10AM  
State of Wisconsin  
2013 - 2014 LEGISLATURE Thanks!



LRB-3112/P3

CMH&MED:eev:im

+MPG

+WLJ

## PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Insert

D-Nate

Regen

1 AN ACT ~~to renumber~~ 961.38 (1r) and 961.435; **to renumber and amend** 961.38

2 (1g), 961.38 (2), 961.38 (3) and 961.38 (4r); **to amend** 450.19 (1) (b), 450.19 (2)

3 (b) and 961.435 (title); and **to create** 961.38 (1g) (a), 961.38 (2) (c), 961.38 (3)

4 (a) 2., 961.38 (3g), 961.38 (4r) (b) and 961.435 (2) of the statutes; **relating to:**

5 identification presentation and monitoring for prescription ~~narcotics and~~

6 ~~providing a penalty.~~

certain drugs

### Analysis by the Legislative Reference Bureau

Under current law, a drug, or controlled substance, is classified in one of five separate schedules. The classification is based on 1) whether there is a currently accepted medical use for the drug; 2) the drug's potential for abuse; and 3) the nature of the dependence that use of the drug may produce. Controlled substances that have a high potential for abuse and no currently accepted medical use are included in Schedule I. Controlled substances that have an accepted medical use and that have the lowest potential for abuse and produce the least dependence when compared with other controlled substances are included in Schedule V. In general, a Schedule I controlled substance may not be dispensed, even with a prescription. A Schedule II, III, or IV controlled substance may be dispensed, but only with a prescription. Any person who dispenses a Schedule II, III, or IV controlled substance without a prescription is guilty of a felony, the level of which depends on the classification of the controlled substance. Under this bill, a Schedule II, III, or IV controlled

or

MPG/

/CMH

substance that is also a narcotic or opiate may not be dispensed unless the person who is picking up the drug shows his or her identification card. Acceptable forms of identification are a driver's license, a state identification card, a U.S. uniformed service card, or a U.S. passport. Under the bill, any person who, without seeing an identification card, dispenses a Schedule II, III, or IV controlled substance that is also a narcotic or opiate is subject to a fine of up to \$500.

Current law requires the Pharmacy Examining Board (PEB) to establish a program to monitor the dispensing of certain prescription drugs, including Schedule II and ~~Schedule III~~ controlled substances and other drugs identified by the PEB as having a high potential for abuse. The program requires pharmacists or persons who prescribe prescription drugs to generate records documenting the dispensing of prescription drugs. The bill requires the PEB to likewise monitor and document the dispensing of Schedule IV controlled substances that, under this bill, require the presentation of an identification because they are narcotics or opiates.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

### Insert A

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1 SECTION 1. 450.19 (1) (b) of the statutes is amended to read:

2 450.19 (1) (b) "Prescription drug" means a substance identified in s. 961.16 or  
3 961.18 or, a substance identified in s. 961.20 that, under s. 961.38 (3) (a) 2., may not  
4 be dispensed without an identification card, or a drug identified by the board by rule  
5 as having a substantial potential for abuse.

6 SECTION 2. 450.19 (2) (b) of the statutes is amended to read:

7 <sup>any</sup> 450.19 (2) (b) Identify specific data elements, including, if applicable, the name  
8 on the identification card presented under s. 961.38 (2) (c) or (3) (a) 2. by the person  
9 to whom the prescription drug is dispensed, to be contained in a record documenting  
10 the dispensing of a prescription drug. In identifying specific data elements, the board  
11 shall consider data elements identified by similar programs in other states and shall

450.11 (1) (b)

passed, s. 2704+5915

a pharmacist or other person who dispenses a Schedule II or III controlled substance to record the name on the identification card of the person to whom the controlled substance is dispensed



1 ensure, to the extent possible, that records generated by the program are easily  
2 shared with other states.

3 **SECTION 3.** 961.38 (1g) of the statutes is renumbered 961.38 (1g) (intro.) and  
4 amended to read:

5 961.38 (1g) (intro.) In this section, ~~“medical;~~

6 (b) “Medical treatment” includes dispensing or administering a narcotic drug  
7 for pain, including intractable pain.

8 **SECTION 4.** 961.38 (1g) (a) of the statutes is created to read:

9 961.38 (1g) (a) “Identification card” means any of the following:

- 10 1. An operator’s license issued under ch. 343.
- 11 2. An identification card issued under s. 343.50.
- 12 3. An identification card issued by a U.S. uniformed service.
- 13 4. A U.S. passport.

14 **SECTION 5.** 961.38 (1r) of the statutes is renumbered 961.38 (2) (a).

15 **SECTION 6.** 961.38 (2) of the statutes is renumbered 961.38 (2) (b) and amended  
16 to read:

17 961.38 (2) (b) ~~In Notwithstanding par. (a),~~ in emergency situations, as defined  
18 by rule of the pharmacy examining board, schedule II drugs may be dispensed upon  
19 an oral prescription of a practitioner, reduced promptly to a written hard copy or  
20 electronic record and filed by the pharmacy.

21 (d) Prescriptions under par. (a) or (b) shall be retained in conformity with rules  
22 of the pharmacy examining board promulgated under s. 961.31. No prescription for  
23 a schedule II substance may be refilled.

24 **SECTION 7.** 961.38 (2) (c) of the statutes is created to read:

1 961.38 (2) (c) Except when dispensed directly by a practitioner, a controlled  
2 substance included in schedule II that is a narcotic drug may not be dispensed under  
3 par. (a) or (b) without an identification card belonging to the person to whom the drug  
4 is being dispensed.

5 **SECTION 8.** 961.38 (3) of the statutes is renumbered 961.38 (3) (a) (intro.) and  
6 amended to read:

7 961.38 (3) (a) (intro.) Except when dispensed directly by a practitioner, other  
8 than a pharmacy, to an ultimate user, a controlled substance included in schedule III  
9 or IV, which is a prescription drug, shall not be dispensed without ~~a~~ all of the  
10 following:

11 1. A written, oral, or electronic prescription of a practitioner. The

12 (b) A prescription under par. (a) 1. shall not be filled or refilled except as  
13 designated on the prescription and in any case not more than 6 months after the date  
14 thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

15 **SECTION 9.** 961.38 (3) (a) 2. of the statutes is created to read:

16 961.38 (3) (a) 2. If the controlled substance is a narcotic drug, an identification  
17 card belonging to the person to whom the drug is being dispensed.

18 **SECTION 10.** 961.38 (3g) of the statutes is created to read:

19 961.38 (3g) If sub. (2) (c) or (3) (a) 2. requires the presentation of an  
20 identification card before a drug may be dispensed and the person to whom the drug  
21 is being dispensed is not the user of the drug, the person dispensing the drug may  
22 ask the user of the drug to designate a person as a person who is authorized to pick  
23 up the drug and may inform the person to whom the drug is being dispensed that his  
24 or her identification is being recorded under s. 450.19.

**SECTION 11.** 961.38 (4r) of the statutes is renumbered 961.38 (4r) (intro.) and amended to read:

~~961.38 (4r) (intro.) A pharmacist is immune from any civil or criminal liability and from discipline under s. 450.10 for any act taken by the pharmacist in reliance on any of the following:~~

~~(a) A reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.~~

**SECTION 12.** 961.38 (4r) (b) of the statutes is created to read:

961.38 (4r) (b) An identification card that the pharmacist reasonably believed was authentic and displayed the name of the person to whom the drug was being dispensed if the sale was made in good faith.

**SECTION 13.** 961.435 (title) of the statutes is amended to read:

**961.435 (title) ~~Specific penalty penalties.~~**

**SECTION 14.** 961.435 of the statutes is renumbered 961.435 (1).

**SECTION 15.** 961.435 (2) of the statutes is created to read:

~~961.435 (2) A person who violates s. 961.38 (2) (c) or (3) (a) 2. may be fined not more than \$500 for each violation and is not subject to a penalty under s. 961.41 for that violation.~~

**(END)**

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3112/lins  
MPG:eev:jm

1           INSERT A

2           **SECTION 1.** 450.11 (1b) of the statutes is created to read:

3           **450.11 (1b)** IDENTIFICATION CARD REQUIRED FOR CERTAIN CONTROLLED SUBSTANCES.

4           (a) In this subsection, "identification card" means any of the following:

- 5               1. An operator's license issued under ch. 343. ✓  
6               2. An identification card issued under s. 343.50. ✓  
7               3. An identification card issued by a U.S. uniformed service. ✓  
8               4. A U.S. passport. ✓

9           (b) Except when dispensed directly to the ultimate user by a practitioner, a  
10          controlled substance included in schedule II or III of ch. 961 may not be dispensed,  
11          and may not be delivered to a representative of the ultimate user, without an  
12          identification card belonging to the person to whom the drug is being dispensed or  
13          delivered.

14          (c) If the person to whom a drug subject to par. (b) is being delivered is not the  
15          ultimate user of the drug, the person delivering the drug may ask the ultimate user  
16          of the drug to designate a person who is authorized to pick up the drug on behalf of  
17          the ultimate user and may inform the person to whom the drug is being delivered  
18          that his or her identification is being recorded under s. 450.19. ✓

19          (d) A pharmacist is immune from any civil or criminal liability and from  
20          discipline under s. 450.10<sup>✓</sup> for any act taken by the pharmacist in reliance on an  
21          identification card that the pharmacist reasonably believed was authentic and  
22          displayed the name of the person to whom the drug was being delivered if the sale  
23          was made in good faith.

- 1        **SECTION ~~#~~ 450.11 (9) (bm)** of the statutes is created to read:
- 2        450.11 **(9)** (bm) A violation of sub. (1b) is not punishable under par. (a) or (b).
- 3        **END INSERT A**

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3112/1dn

MPG:.....

Wj

Date

Representative Nygren:

Please review this draft carefully to ensure that it is consistent with your intent.

This draft transfers the identification card requirements to ch. 450, creating s. 450.11 (1b). Please note that the draft exempts a violation of the identification card rules from a penalty under s. 450.11 (9) (a) or (b) for violations of s. 450.11 concerning the dispensing or delivery of a drug. Therefore, the default penalty under s. 450.18 applies (between \$50 and \$100 or between 30 and 90 days in jail or both). Is that consistent with your intent?

Please do not hesitate to contact me with any questions.

Thank you.

Michael Gallagher  
Legislative Attorney  
Phone: (608) 267-7511  
E-mail: michael.gallagher@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3112/1dn  
MPG:wlj:wlj

October 4, 2013

Representative Nygren:

Please review this draft carefully to ensure that it is consistent with your intent.

This draft transfers the identification card requirements to ch. 450, creating s. 450.11 (1b). Please note that the draft exempts a violation of the identification card rules from a penalty under s. 450.11 (9) (a) or (b) for violations of s. 450.11 concerning the dispensing or delivery of a drug. Therefore, the default penalty under s. 450.18 applies (between \$50 and \$100 or between 30 and 90 days in jail or both). Is that consistent with your intent?

Please do not hesitate to contact me with any questions.

Thank you.

Michael Gallagher  
Legislative Attorney  
Phone: (608) 267-7511  
E-mail: michael.gallagher@legis.wisconsin.gov



— Now —  
State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-311271

CMH/MED/MPG:eev&wlj/wlj

Stays

pf

1/2

## 2013 BILL

Regen

- 1 AN ACT *to amend* 450.19 (2) (b); and *to create* 450.11 (1b) and 450.11 (9) (bm)
- 2 of the statutes; **relating to:** identification presentation and monitoring for
- 3 certain prescription drugs.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a drug, or controlled substance, is classified in one of five separate schedules. The classification is based on 1) whether there is a currently accepted medical use for the drug; 2) the drug's potential for abuse; and 3) the nature of the dependence that use of the drug may produce. Controlled substances that have a high potential for abuse and no currently accepted medical use are included in Schedule I. Controlled substances that have an accepted medical use and that have the lowest potential for abuse and produce the least dependence when compared with other controlled substances are included in Schedule V. In general, a Schedule I controlled substance may not be dispensed, even with a prescription. A Schedule II, III, or IV controlled substance may be dispensed, but only with a prescription. Any person who dispenses a Schedule II, III, or IV controlled substance without a prescription is guilty of a felony, the level of which depends on the classification of the controlled substance. Under this bill, a Schedule II or III controlled substance may not be dispensed unless the person who is picking up the drug shows his or her identification card. Acceptable forms of identification are a driver's license, a state identification card, a U.S. uniformed service card, or a U.S. passport.

Current law requires the Pharmacy Examining Board (PEB) to establish a program to monitor the dispensing of certain prescription drugs, including Schedule



**BILL**

II and III controlled substances and other drugs identified by the PEB as having a high potential for abuse. The program requires pharmacists or persons who prescribe prescription drugs to generate records documenting the dispensing of prescription drugs. The bill requires a pharmacist or other person who dispenses a Schedule II or III controlled substance to record the name on the identification card of the person to whom the controlled substance is dispensed.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 450.11 (1b) of the statutes is created to read:

2           **450.11 (1b) IDENTIFICATION CARD REQUIRED FOR CERTAIN CONTROLLED SUBSTANCES.**

3           (a) In this subsection, "identification card" means any of the following:

4               1. An operator's license issued under ch. 343.

5               2. An identification card issued under s. 343.50.

6               3. An identification card issued by a U.S. uniformed service.

7               4. A U.S. passport.

8           (b) Except when <sup>administered or</sup> dispensed directly to the ultimate user by a practitioner, a  
9           controlled substance included in schedule II or III of ch. 961 may not be dispensed,  
10           and may not be delivered to a representative of the ultimate user, without an  
11           identification card belonging to the person to whom the drug is being dispensed or  
12           delivered.

13           (c) If the person to whom a drug subject to par. (b) is being delivered is not the  
14           ultimate user of the drug, the person delivering the drug may ask the ultimate user  
15           of the drug to designate a person who is authorized to pick up the drug on behalf of  
16           the ultimate user and may inform the person to whom the drug is being delivered  
17           that his or her identification is being recorded under s. 450.19.

**BILL**

1 (d) A pharmacist is immune from any civil or criminal liability and from  
2 discipline under s. 450.10 for any act taken by the pharmacist in reliance on an  
3 identification card that the pharmacist reasonably believed was authentic and  
4 displayed the name of the person to whom the drug was being delivered if the sale  
5 was made in good faith.

6 **SECTION 2.** 450.11 (9) (bm) of the statutes is created to read:

7 450.11 (9) (bm) A violation of sub. (1b) is not punishable under par. (a) or (b).

8 **SECTION 3.** 450.19 (2) (b) of the statutes is amended to read:

9 450.19 (2) (b) Identify specific data elements, including the name on any  
10 identification card presented under s. 450.11 (1b), to be contained in a record  
11 documenting the dispensing of a prescription drug. In identifying specific data  
12 elements, the board shall consider data elements identified by similar programs in  
13 other states and shall ensure, to the extent possible, that records generated by the  
14 program are easily shared with other states.

15 (END)

**Rose, Stefanie**

---

**From:** Malcore, Jennifer  
**Sent:** Friday, October 04, 2013 11:38 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -3112/2 Topic: Identification necessary to pick up certain prescriptions

Please rush!!

Thank you!!

Please Jacket LRB -3112/2 for the ASSEMBLY.